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# MIDSTREAM

A Monthly Jewish Review

## The Mood in Egypt

Zeev Schiff

## Anti-Semitism in Argentina

Robert Weisbrot

## USSR vs. A. Shcharansky

Ilya Levkov

## Affirmative Action

George Jochnowitz, Michael Kort

## Reports on the 29th Zionist Congress

Marie Syrkin, Melvin I. Urofsky

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Poetry, Fiction, Theater, Reviews, Letters—Ruth Beker,  
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# Statement of Purpose

THE THEODOR HERZL FOUNDATION has been established as an educational agency to promote the study and discussion of problems confronting the Jews of the world today. Two overwhelming changes in the context of our Jewish existence—on the one hand, the destruction of one-third of world Jewry, which has erased many political and cultural landmarks, and on the other, the rise of the State of Israel, which has opened broad new horizons—call for a reexamination of basic concepts and the ways to Jewish fulfillment. Equally grave and equally difficult to answer in traditional terms, are the fateful questions that face a world aghast at the threat of its own annihilation. It is against this background that *Midstream* has been conceived.

In sponsoring *Midstream*, a Zionist publication, we are committed, above all, to free inquiry. We conceive Zionism as, in essence, a questioning of the Jewish *status quo*, and as a steady confrontation of the problems of Jewish existence. It is our hope that *Midstream* will offer critical interpretation of the past, searching examination of the present, and afford a medium for considered and independent opinion and for creative cultural expression.

*Midstream* is not an official organ, nor do the publishers and editors necessarily identify themselves with views expressed in its pages. It is rather, our purpose to enable a wide range of thought to appear in the columns of this magazine.

THE THEODOR HERZL FOUNDATION, INC.

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# USSR vs. A. Shcharansky

ILYA LEVKOV

*"Kto zakony pishet, tot ikh i lomaet."*  
(He who writes law also breaks it—  
old Russian proverb.)

The current Jewish Exodus from the Soviet Union is by now well-known. However, each new chapter of its chronicle is filled with new actors. Thus only a handful of people were familiar with Anatoly Shcharansky a year ago when he was plucked from a Moscow telephone booth by agents of the KGB.

Shcharansky's fate has now become a focal point in U.S.-USSR relations. Numerous Senators, Congressmen and even President Carter have voiced their assurance of his innocence. A special Ad Hoc Commission on Justice for Anatoly Shcharansky headed by President William McGill of Columbia University, convened officially in the Senate Office Building on October 20, 1977, to receive testimony in defense of Shcharansky. The witnesses were questioned by Professor Alan Dershowitz of Harvard. Thus, figuratively speaking, Shcharansky became a constituent of each Senator and Congressman.

The American intellectual community in an unprecedented way rose on behalf of Shcharansky: 72 deans of American law schools and over 100 law professors signed a resolution which was forwarded to Brezhnev deplored the action of the Soviet Union. The Association for Computer Machinery severed its ties with the Soviet Union; the 81st Summer Meeting of the

American Mathematical Society came out with a special resolution on his behalf; Phillip Handler, President of the National Academy of Sciences, cabled Leonid Brezhnev to release Shcharansky. Over 300 participants of the Fifth International Joint Conference on Artificial Intelligence wrote an appeal to Brezhnev. In a special meeting of the Congress on International Federation of Information Processing (IFIP) in Toronto in August, 1977, over 100 participants signed an appeal to Brezhnev and fifteen (out of twenty-five) participants at the World Computer Chess Championship also sent a letter to Brezhnev. Questions were asked in the Parliaments of France, England and Canada. Never before, in the last twenty-five years has the fate of one individual commanded so much international support.

Here I shall outline the web of intricate politics the Soviet authorities are using to suppress and to divide the Jewish activists who have proclaimed family reunification and the right to emigrate as integral rights.

Shcharansky, a 30-year-old computer engineer, was catapulted to prominence as a result of two events rather than for anything he had done: an article in *Izvestiia* accusing him of being a CIA agent and his consequent arrest. There seems to be nothing unusual in the background of this young Soviet Jew who, upon graduation from Moscow's Institute of Physics in 1971, decided to emigrate to Israel, despite tried to avoid any exposure to solve the difficulties. With this in mind, he called "classified information" that

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might jeopardize his chances of getting an exit visa, and he intentionally took a lower position in a non-related field.

In April, 1973, he applied for an exit visa; his request was denied without explanation. He plunged into the affairs of the Jewish *refuseniks*: he joined a seminar of scientist-*refuseniks* and became a leading activist for Jewish rights in general and emigration in particular. His high intelligence, gregarious personality and unusual political maturity made him an unofficial leader of the Jewish activists. His fluency in English made him a natural bridge to Western journalists and visitors in Moscow.

The life of a Jewish *refusenik* is harsh and full surprises. Expelled from the circle of normal life, the *refusenik* often loses his standing in society: personal friends and professional colleagues avoid him. Generally out of work, the *refusenik* is forced to take the most menial job.

People locked in this limbo for several years without a clue as to when their ordeal will end become unsettled: personal consequences are sometimes tragic. Shcharansky's integrity and confidence made, for many Jewish emigration-activists, the period of sit-and-wait a little more bearable. He tried to publicize the Soviet policy of refusing exit visas to Jews who asked to emigrate and to be reunited with their families. The constant harassment by the KGB often culminated in so-called "preventative arrests," usually on the occasion of a visit by a major foreign leader. Such detentions, of 14 days' duration, require no special permit and no certification is given upon release: Shcharansky was arrested twelve times. Otherwise, KGB agents followed him closely in groups of four to eight.

Two weeks before his wedding to Natalia Shtiglitz, he was literally kid-

napped by the KGB and released only on his wedding day. The couple was married in a religious ceremony on July 4, 1974. The next day Natalia was forced to leave the Soviet Union.

**T**he first public assault against Shcharansky was in the form of an open letter from Sania Lipavsky to the Supreme Soviet; it appeared in *Izvestiia* on March 5, 1977. Lipavsky was Shcharansky's colleague, a veteran *refusenik* and activist. The same issue of *Izvestiia* carried a parallel article to Lipavsky's letter titled: "The CIA: Spies and Human Rights."

These two articles accused the Jewish activist of being on the payroll of the CIA and of gathering "secret information" about the Soviet Union. Ten days later, on March 15, 1977, after intensive observation by KGB agents, Shcharansky was arrested and sent to Moscow's notorious Lefortovo prison. He has remained incarcerated there until today.

On May 8, 1977, Sania Lipavsky gave an interview in order "to clarify additional aspects." *Izvestiia* called it "How I Was Recruited by the CIA."

The protagonists in this alleged Jewish-CIA drama are Professor Vitaly Rubin, who at that time was already in Israel, Mark Azbel, Alexander Lerner and Vladimir Slepak. Shcharansky was mentioned in Lipavsky's letter as a member of the Moscow Committee to Monitor the Soviet Implementation of the Helsinki Agreement, as the replacement for Rubin following his emigration to Israel, and as the person Professor Alexander Lerner instructed to gather information concerning various Soviet installations. These installations supposedly produce products for Soviet defense. The data were meant to force American exporters to stop any transfer of technology to such in-

stitutions, as a form of pressure on behalf of the *refuseniks*.

The major villain, according to these three articles, was the CIA, whose agents carried out those "insidious plans" under diplomatic cover. The main charge fell on Mel Levitzky and his successor Joseph Presel—consul of the U.S. Embassy in Moscow. Levitzky was mentioned eighteen times, Presel nine, and his assistant Eileen Natanson three times. Shcharansky's name was mentioned only twice, and with no direct relation to the three major figures. The thrust of the original Soviet tactic seems to have been aimed at the State Department. These are the essential elements of the first round, which ended in June, 1977.

For two and a half months the Soviet authorities kept Shcharansky incommunicado without even informing his parents of his arrest. On June 1, they finally telephoned his mother and informed her that the preliminary charges against him included treason. However, the process had begun several weeks before, when various levels of police and the KGB opened an all-Union campaign of interrogation of dozens of people who had once met Shcharansky or only heard of him.

In addition, the Soviet authorities attempted to tie Shcharansky to alleged subversive activities: on June 10, Robert Toth, the Moscow correspondent of the *Los Angeles Times*, was caught with "incriminating" material in a plainly set-up situation; he was interrogated for two days. His interrogators directed their questions toward the source of his information. Suspecting nothing unusual in it, Toth openly stated that Shcharansky was indeed the source of his information concerning the state of Jewish emigration and various aspects of science and technology. Those innocent statements by Toth could be twisted into criminal activi-

ties when the KGB decided to do so. It seems that Toth's statements will be used against Shcharansky in his trial.

Following the Toth arrest, President Carter stated on June 13, 1977, that Shcharansky "has never had any relationship" with the CIA. That statement did not deter the Soviets from their campaign of interrogations.

Dozens of Jews who were interrogated in the ensuing several months testified that there was nothing more remote from and incompatible with Shcharansky's activities than treason. Any information he was gathering about Jewish *refuseniks*, for example, was open and intended for publication to support the cause of Jewish emigration. (The penalty prescribed by Soviet law for treason ranges from 10 years imprisonment to death.)

The following is a condensed analysis of the information sought by the interrogators of the KGB in over twelve cities. It reveals the objectives of the interrogators:

1. Information about Shcharansky's personality and his general way of life—such "innocent" intimate information about the suspect gives the interrogator enormous leverage, creating the image that the suspect's life is being completely exposed, making him highly vulnerable.
2. Investigators tried to make the preparations and signing of collective petitions look like an act of "conspiracy."
3. Data about his foreign "acquaintances."
4. Full disclosure of lists of petitions signed by Shcharansky and others, which were made available to Western public opinion.
5. The nature of Shcharansky's role in the Moscow *aliyah* movement.
6. Special interest was devoted to the list found in Shcharansky's apartment; this contained the names of seventy-eight *refuseniks* and their place of work. The general assumption is that this list could

have included a number of so-called "closed" institutions. Several witnesses stated, however, that the list shown to them did not include the P.O. Box of any such institution.

7. The nature of Shcharansky's role in the Moscow scientific seminars held for *refuseniks* and the December, 1976, seminar on Jewish culture.

The investigation clearly indicates that the KGB is trying to implicate Shcharansky on a very broad range of activities, ranging from anti-Soviet activities to defamation of the Soviet state, espionage, and treason.

**S**imultaneously with this extensive web of interrogations, the Soviet authorities shifted their interest to the assumed "achilles heel"—the American correspondents. Here they could proceed quite freely without endangering the fabric of détente, which could have happened had they directed their wrath against the State Department. In addition, the Soviets had a well-publicized precedent: in previous years they had openly accused American correspondents—Alfred Friendly, George Krimsky, and Peter Osnos—of being CIA agents. Friendly finished his term, but Krimsky was expelled. With this experience in mind, and aware of the general atmosphere in the USA concerning the credibility of American journalists, which was being created by the Senate Committee headed by Frank Church, and the revelations of *Rolling Stone* magazine that 400 American journalists had collaborated with the CIA, the Soviets understood that here was a space for maneuvering. The recent example of Richard Helms, who refused to testify before a Congressional committee, pointed out to the Soviets the possibility that they could stretch their case without facing the danger of being confronted with opposing CIA testimony. Thus began

a new assault on the credibility of the American press.

The campaign began with a general article in the Soviet *Literary Gazette*, July 14, 1977, titled: "How Agents Are Recruited by the CIA." The message was clear: the CIA has a broad base among American correspondents. Quoting the *Washington Post* of February 10, 1976, ". . . The CIA director George Bush met last Wednesday in New York with representatives of CBS and *The New York Times*. Bush has found that they are in full agreement with the decision of the CIA to 'bury' the past. One of the representatives of the press said to Bush openly: 'We defend our sources of information and you should defend yours.' " Thus the transmitted message stated clearly that in spite of the recent changes of public opinion, there is a continuous collaboration between the CIA and the press.

On August 31, 1977, the *Literary Gazette* came out with a well prepared assault against Robert Toth. This article, using Toth's private correspondence, depicted him as a veteran of American intelligence, who maintained extensive ties with leading intelligence experts in the Pentagon, NATO, and with General Alexander Haig. The article referred to Toth's statement concerning his sources of information: ". . . he used the same methods to obtain information as Krimsky and Friendly. They all used the services of the same renegade who is now under interrogation. . ." Thus, the "link" between the "veteran spy" Toth and Shcharansky was reinforced.

The absence of a vehement denial of these Soviet allegations by the Western press in general, and by Robert Toth in particular, gave the *Literary Gazette* of September 14, 1977, reason to interpret this silence as agreement

in an article titled: "More Eloquent Than Any Words."

On October 15, 1977, *Izvestiia* published a long article titled: "Who Sows the Seeds of Discord?" This repeated the previously mentioned theme and went one step further by mentioning Lipavsky's letter as a proof of such collaborations. The article stated that Vitaly Ruhin, already abroad, continued to issue directives, via the U.S. Embassy in Moscow, to the Jewish activists in Moscow. He allegedly instructed them to direct their activities toward undermining the transfer of technology from the USA to the Soviet Union. Although Shcharansky was not mentioned by name, there are two indirect but close connections: Lipavsky's letter and Rubin, whose place on the Moscow Monitoring Committee was taken by Shcharansky after Rubin's departure to Israel.

On October 28, 1977, the Soviet news agency TASS responded to the numerous Western rallies in defense of Shcharansky with a direct accusation. It charged him with treason and—with carrying out the orders of his masters by supplying the West with data on Soviet industries in order to disrupt trade links with the West. The statement openly concluded that: ". . . Shcharansky's guilt is shown by Lipavsky's statement. . ." In an effort to discredit Shcharansky's personality, the TASS statement accused him of having three wives in the last three years. (This is a flagrant lie.) Again calling Shcharansky a traitor to his motherland, the statement promised he would be punished with all due severity.

**T**he case was expected to go to court by December 15, 1977, since nine months is the longest period allowed by the Soviet law for a preliminary investigation and interrogation. However, in order to show the world the

extent of Soviet unpredictability, this term was extended for an additional six-month period by a special decree of the Presidium of the Supreme Soviet of the USSR. Three weeks later, the state prosecutor in charge of the case informed Shcharansky's mother that she should look for a lawyer (i.e.—the preliminary interrogation had ended and the prosecution was ready to present the official and final charges in court). In light of this speedy conclusion the following question should be asked: why did the Presidium of the Supreme Soviet of the USSR have to convene three weeks earlier to promulgate a special decree? No doubt the Soviets wanted to show they have the power to do whatever they wish.

On February 2, a new element was introduced—Mr. and Mrs. Shtiglitz—the estranged parents of Natalia—sent letters to President Carter and Senators Javits and Moynihan, in which they claimed that their daughter never married the imprisoned Shcharansky. They supported this contention by saying that neither the synagogues nor the civilian authorities registered the wedding. Natalia replied immediately to that accusation, saying that the civil authorities and the Chief Rabbi put numerous obstacles before their marriage, using ridiculous arguments such as claiming that Shcharansky was too old for her. (He is three years older.) Senators Javits and Moynihan pointed out the cynicism and the insensitivity to U.S. opinion of the Soviet authorities as shown by the delivery of the letter to their offices by USSR Embassy personnel. They concluded their reply with a statement: "Don't send us letters, send us Shcharansky."

This situation forced Natalia and Anatoly to have a secret religious ceremony conducted by a rabbi before several witnesses, as is required by the

Jewish religion. The wedding document—*Ktuba*—was signed, and upon Natalia's arrival in Israel, the Regional Rabbinical Court of Jerusalem on behalf of the state of Israel, after a thorough checking of the submitted evidence, issued the official authorization, testifying that Natalia is lawfully married to Anatoly Shcharansky. The document, No. 211, was issued on September 12, 1974.

All involved parties—Shcharansky, Natalia's parents, the Soviet Foreign Office, and the Supreme Soviet—received copies of that official document, issued by the state of Israel. Yet, this did not prevent the *Literary Gazette*, February 15, 1978, from claiming in an article titled: "Adventuress Hits the Road" that the so-called "Avital Shcharansky" does not exist and her role is being played by Natalia Shtiglitz. (Natalia changed her name to Avital in Israel). The article added that Shcharansky once did consider marrying her, because she had an exit visa, but at the last moment declined to marry her in the synagogue, thus they are not married according to the Jewish tradition or according to Soviet law. In order to prove this assertion, the newspaper displayed a photocopy of Shcharansky's request for an exit visa—dated July 23, 1973—in which he asks to be reunited with his fiance Liubov Ershkovich, who was already in Israel. However, regardless of the circumstances that brought Shcharansky to declare Ershkovich as his fiance in July, 1973, he met Avital only in October, 1973, and did marry her according to Jewish custom on July 4, 1974. The Soviet accusations about Avital are an attempt to undermine her world-wide campaign on behalf of her husband, and to discredit Shcharansky's credibility as a person worthy to be defended by world public opinion.

**C**lose analysis of the questions asked the numerous witnesses by interrogators indicates the possible charges against Shcharansky according to the following eight articles of the Soviet Criminal Code:

- a) Treason. Article 64a
- b) Espionage. Article 65
- c) Anti-Soviet Propaganda. Article 70
- d) Organizational Activity directed to Commission of Especially Dangerous Crimes Against the State and Also Participation in Anti-Soviet Organizations. Article 72
- e) Divulgance of a State Secret. Article 75
- f) Circulation of Fabrications known to be False Which Defame Soviet State & Social System. Article 190-1

The range of sentences is from one to eight years for the "minor"—70, 75, 190-1—with additional periods of exile, and up to the death sentence for 64a, 65, 72.<sup>1</sup>

In view of the provisions of these Articles, it is evident that the Soviets do not have a case against Shcharansky for "treason, espionage or organizing activities dangerous to state." It is possible to stretch the articles of anti-Soviet propaganda and fabrications to defame the state to cover Shcharansky's activities. However, even here the scope can be limited by pointing out that information on emigration supplied by him to Toth constitutes a documented result of Soviet policy—and therefore it cannot be a *fabrication or defamation*.

This wide range of possible accusations brings us to the following related aspect of Soviet jurisprudence: *change of accusation*. Such a change can be made at each stage of the process, beginning with the formulation of the original accusation and ending with the appeal to the Supreme Court. These changes can be made by persons

conducting the preliminary investigation, by prosecutors, and by judges. The nature of such changes can be to narrow, widen (in the case of new information) or change the charges altogether. Articles 215, 227 and 254 of the Code of Criminal Procedure (CCP) provide stipulations for changing the charges only in favor of the accused.<sup>2</sup>

Under certain situations, Soviet law permits the court to declare the accused guilty without assigning punishment—Article 309 of the CCP:

. . . the court shall decree a judgment of conviction without assigning punishment if, by the time the case is considered in court, the act has lost its social danger or the person who has committed it has ceased to be socially dangerous. . . .

Thus, if the defense can prove that the accusations of Shcharansky's spying and treason are groundless, the element of "social danger" becomes irrelevant. After all, the Soviet authorities have time and again declared that there is a Jewish emigration and that a certain percentage is being denied this right because of "state secrets."

Originally, in 1963, this Article was intended to cover minor crimes, such as self-abortions, but there are grounds to demand its application to Shcharansky.

Special attention should be given to the issue of so-called "state secrets" which is covered by Article 75:

Divulging of information constituting a state secret by a person to whom such information has been *entrusted* or has become known because of his *position* or *work*. . . .

In Soviet society, which is tightly controlled, a wide range of innocent information is defined as a "state secret." Thus students have to sign a nebulous list of security provisions (*dopusk*) and close to 80 percent of all factories

are considered "classified" and have a First Section which handles all classified documents. However, in spite of this wide range of secrecy no Soviet law defines what the state secrets are! A ten-year old legal textbook<sup>3</sup> presents a twelve-year old list of matters which constitute state secrets. That list is divided into information of economic and military nature. It is worth noting that this list omits two categories that were listed in the previous one of 1947. Those are items dealing with:

1. . . . approved or proposed plans for importing' or exporting particular kinds of goods and the status of export reserves and of particular kinds of goods.
2. Other information pertaining to negotiations and to relations and agreements of the USSR with foreign states.

Thus information allegedly passed by Shcharansky is not covered by the known regulations.

Another source of information on what might constitute a 'state secret' is a yearly guideline for censors, *List of Information Not Intended for Publication in Open Press*. Although this book is revised and reprinted each year, it remains out of reach of the ordinary citizen, and the mere acknowledgment of its existence constitutes a divulgence of a state secret.

Professor Naum Meiman, a Jewish activist and a veteran *refusenik*, recently wrote an article about the need to clarify the term "state secrets." Professor Yury Orlov, a Russian dissident, two days before his last arrest, February 8, 1977, finished a project for an International Conference for the Declassification of Information that he intended to present in Belgrade. Unfortunately, Professor Meiman is still being denied his request to emigrate under the pretext of his possession of state secrets, Orlov remains imprisoned

to this day, and "state secrets" continue to be used to prevent the unification of families and the right to emigrate.

It may be of interest to present some Soviet statistical data concerning judicial mistakes. Thus, 21 percent of the cases reversed by the Supreme Soviet in the period 1950-1964 were the result of the incorrect presentation of charges. Analysis of 853 reversed criminal cases in 1967 showed that 30 percent of mistakes were related to the unsubstantiated or incorrect assertion of guilt.<sup>4</sup>

It goes without saying that the presented data did not include cases related to the disclosure of "state secrets." However, noting the extent of negligence in Soviet jurisprudence, we can presume that no special efforts to present correct charges are made when the case deals with such issues as "defamation of the Soviet state," "anti-Soviet propaganda," or "the divulging of state secrets."

**O**n February 24, 1978, eleven months after Shcharansky's arrest, the Soviet authorities announced that a lawyer had been appointed to defend him. This practice of presenting the accused with an attorney at a late stage, even in cases involving crimes punishable by death, is in accordance with Article 49.<sup>5</sup> A 1970 decree of the Supreme Soviet expanded the right of the suspect to have an attorney at an early stage of the preliminary investigation.<sup>6</sup>

This demand to expand the rights of the accused can be understood on the basis of a recent survey of the opinion of Soviet policemen of the role of a lawyer in the criminal procedure. Half of those interviewed found the defense attorney role not needed!<sup>7</sup>

In addition to an attorney, Soviet

law permits the accused to be defended by any number of relatives, friends and co-workers.<sup>8</sup> However, the law limits the handling of so-called political cases to a small number of members of the local Collegium (Bar) who have been approved by the KGB and have a special permit (*dopusk*). The Moscow Collegium includes 950 lawyers of which about seventy have such a permit, but only twenty are permitted to handle political trials. This permit must be renewed every two years.

Until now the Soviet authorities have refused the requests of various Soviet and foreign lawyers, such as Isadore Fisch of Britain, to defend Shcharansky. At this stage the Procurator who initiated the case has the full authority to conduct the preliminary investigation and to prove to the judge that everything in the presented file is true, without the possibility of the newly appointed lawyer seeing the file.<sup>9</sup> The defense attorney will have the chance to read the case in the court building after the judges have agreed on the accuracy of the presented charges. The defense attorney has no chance to mount an extensive interrogation of witnesses similar to that made by the organs of preliminary investigation.

Thus, at the present time Shcharansky has been denied his absolute right to appoint his own defense lawyer and receive a proper legal defense. According to Soviet legal theory:

The absence of a defense not only makes the defense difficult but actually *nullifies* the weight of the material defense.<sup>10</sup>

On March 1, 1978, the Chairman of the Moscow Collegium, Mr. Apakins, informed Shcharansky's mother that Mrs. Sylvia Dubrovskaia would be his defense attorney. At the moment we have only fragmentary information about Mrs. Dubrovskaia to explain her

appointment. Mrs. Dubrovskaya is Jewish, in her fifties, a member of the Presidium of the Moscow Collegium, active in the Collegium and very energetic. Most of her past cases were related to economic crimes. She is very close to Apraksin and his deputy Skliarsky, which makes it quite possible that she has the *dopushk*.

On the basis of this information, it is doubtful that Mrs. Dubrovskaya will mount a head-on-offensive in order to save Shcharansky. Being closely integrated into the Soviet legal elite, it is probable that she will follow directions from above.

The prosecutor in charge of Shcharansky's case asked him, as prescribed by the CCP, to review the prepared accusation with his defense attorney. Since Shcharansky refused to accept the assigned attorney, and did not review the prepared accusation, he has no precise knowledge of it. The prosecutor failed to carry out his obligation to meet with the attorney chosen by Shcharansky's family within 5 days.

**S**ome brief remarks about Sania Lipavsky, the state witness against Shcharansky, are in order here. A physician and *refusenik*, he belonged to the Jewish activists of Moscow. On various occasions he offered his professional services to numerous *refuseniks*, including the non-Jewish ones. Like many other *refuseniks*, he was also interrogated by the KGB, his apartment was searched, etc. However, in the light of his testimony, we should ask again, who is Sania Lipavsky?

The Soviet authorities have a long tradition of planting provocateurs at social and political gatherings and organizations. Thus a person named "Venya" participated together with Hillel Butman and Mark Dymshitz in the plans to seize a small plane on the ground and escape to Israel. This

case culminated in the infamous First Leningrad Trial, in December, 1970. The KGB's view is that everyone has a weak link at which they can be broken. Thus Piotr Yakir, a prominent figure in the Russian dissident movement, was broken completely, as a result of his addiction to alcohol.

Dr. Sania Lipavsky could have been forced into making statements against Shcharansky, Lerner and his friends. The following aspects of Lipavsky's background could have been used by the KGB to pressure him:

1. In the early sixties, Lipavsky was reportedly present at an operation on the noted physicist, Lev Landau, when an unidentified Western medicament was used to revive Landau's brain. Lipavsky obtained a remnant of this substance, analysed it and presented it as his dissertation.
2. At one time, Lipavsky's father was sentenced to jail for an economic crime, and sometime between 1972 and 1973 was prematurely released.
3. Numerous people who know Lipavsky say he is cocky, likes to brag about being close to Andrei Sakharov and to various diplomats and about his numerous attempts to outwit the KGB. He is rumored to be a person who "loves money" and had lived beyond his income: owning a luxurious car "Volga" and building a summer house for his father.

It is very difficult to pinpoint the day on which Lipavsky began to collaborate. However, it was established that on February 4, 1977—a month before his letter was published in *Izvestia*—he stated: "Something terrible is going to happen in Moscow!" That evening Alexander Ginsburg, a leading dissident, was arrested. Lipavsky also inquired about the possibility and procedure of selling a summer house. Had Lipavsky already been approached by the KGB, but still hoped to outwit

them again? The evidence is unclear. However, we do know that until the last moment Lipavsky remained in close contact with Shcharansky, and even busied himself with finding a room in Moscow for him.

From the purely legal point, Lipavsky has openly declared that he was recruited by the CIA and thus, in this new role his evidence can be used against Shcharansky, without the defense attorney being able to refute it. Thus Shcharansky's guilt could be simply derived from his close association with a self-declared spy.

**I**t is very difficult to discern the Soviet motives for delaying Shcharansky's trial. Several analysts have attributed it to the Soviet desire not to "rock the boat" during the Belgrade Conference; others say it is due to Senator Jackson's visit to Moscow at the end of March. However, it is clear that the Soviet decision-making concerning Shcharansky's fate takes place within the general realm of the Helsinki Agreement and the desire to expand the transfer of American technology.

The juridical character of the 1975 Helsinki Agreement is being interpreted in the West as unacceptable under Article 102 of the Charter of the United Nations as an *agreement* within the context of international law. This opinion was recently stated by Mr. Gaston Thorn, President-in-Office of the European Parliament on May 14, 1977. According to this interpretation, there can be no talks about the violations of the Helsinki Agreement and its Final Act.

The Soviet position is quite different. The Soviet approach allows the incorporation into international customary law of international declarations and acts which restate already existing bilateral agreements or which are

adopted by permanent international organizations.<sup>11</sup> The Soviet Union has accused the West of belittling the significance of the Final Act, because of its not being legally binding.<sup>12</sup>

This Soviet insistence on giving the maximum interpretation of the binding power of the Final Act is rooted in Basket One—which deals with the inviolability of borders, thus legalizing the present borders in Eastern Europe. However, when it comes to the issue of human rights the Soviets reply that such interference violates their sovereignty. This is not so according to the Soviet definition of sovereignty: "Absolute sovereignty ceases to exist the moment a state enters into negotiations, and thus sovereignty does not exclude mutual obligations. Such self-limitation of its own sovereignty is a sign of a state's sovereignty."<sup>13</sup> Thus, the Moscow Committee to Monitor the Implementation of the Final Act broke no laws, nor the sovereignty of the USSR.

Trade, the transfer of technology and the extensions of Export-Import Bank credits have become one of the major axes of U.S.-Soviet relations. It is in the light of those Soviet interests that it is puzzling to read a recent Soviet article which assails one of the prominent American Soviet experts, Marshall Shulman, who takes a very liberal stand on the issue of trade with the Soviet Union. In his article entitled "On Learning to Live with Authoritarian Regimes"<sup>14</sup> he calls the Trade-Reform Act (The Jackson-Vanick Amendment) of 1974, which denied most-favored-nation status to the Soviet Union until it changed its policies on emigration, an extreme measure. Shulman advises the introduction of common ethical values such as the commitment to justice, human dignity and equality rather than trying to impose political pluralism

on the Soviet Union. This advice does not constitute the priority of governmental relations, which is the regulation of military and political competition in order to reduce the danger of nuclear war.

Thus, it was very surprising that Shulman's call for commitment to justice was replied to recently by an extreme article entitled "Sovietologists Distort Realities."<sup>15</sup> The main thrust of this accusation goes against Shul-

man's hope that the changes of the Soviet system will occur as the result of "internal forces" and "pluralism" rather than from external demands for change. It is very regrettable that such a moderate call is being so vehemently opposed.

Will Anatoly Shcharansky, because of his efforts to immigrate to Israel and build a home with Avital, be charged as the leader of such "internal forces"?

#### *Footnotes*

1. For a detailed analysis of possible charges see memorandum prepared by Phil Baum and Marc Stern—American Jewish Congress, Commission on International Affairs, January 9, 1978.
2. For an extensive analysis of this issue see F. N. Fatkullin, *Changing of Accusation*, Moscow, 1971.
3. P. P. Mikhailenko (ed), *Soviet Criminal Code, Special Part*, Ministry of Internal Affairs of Ukrainian SSR, Kiev, 1968.
4. M. Ugrekhelidze, *Problem of Criminal Carelessness in the Criminal Law*. Academy of Science of Georgian, SSR, Tbilisi, 1976, pp. 16-17.
5. *Commentary to Code of Criminal Procedure*, ed. A.K. Orlov (Chairman of the Supreme Soviet of the RSFSR), Moscow, 1976, pp. 73-74.
6. E. G. Martynchik, "Subjective rights of an accused and its procedural guarantees." *Soviet State and Law*, No. 7, July 1976, p. 91.
7. Yu. I. Stetzkovsky, *Lawyer in the Criminal Legal Procedure*, Moscow, 1972, p. 6.
8. Article 47 of the CCP, see also *Commentary*, pp. 69-72.
9. V. M. Savitzky, *Essays on Theory of the Procurator's Supervision*, Academy of Science USSR, Institute of State and Law, Moscow, 1975, pp. 226-242.
10. Stetzkovsky, p. 4, see also Ya. O. Motovilovker, "Concerning the Interests of personality and justice," *Soviet State and Law*, 1974, No. 6, p. 103.
11. V. A. Vasilenko, *State's Responsibility for Violations of International Law*. Kiev, 1976, pp. 81-82.
12. A. Maximov, "Helsinki Agreements Should be Implemented," *International Life* (Russian), Moscow, 1976, No. 5, p. 31.
13. Yu. Kolosov, "Sovereignly," *International Life*, Moscow, 1976, No. 7, pp. 159-160.
14. *Foreign Affairs* January 1977, pp. 324-338.
15. Prof. Y. Modrzinskaya, "Sovietologists Distort Realities," *International Affairs*, Moscow, No. 1, 1978, (English), pp. 97-104.